NO. 80 - 697

Supreme Court, U.S.
FILED
DEC 1 1980
MICHAEL RODAK, JR., CLE

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

COALITION TO PRESERVE HOUSTON AND THE HOUSTON INDEPENDENT SCHOOL DISTRICT, ET AL.,

Appellants

V.

INTERIM BOARD OF TRUSTEES OF THE WESTHEIMER INDEPENDENT SCHOOL DISTRICT, ET AL.,

Appellees

On Appeal From The United States District Court For The Southern District Of Texas

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MOTION TO DISMISS

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QUESTION PRESENTED

Whether this Honorable Court has jurisdiction under 28 U.S.C. §1253 to hear an appeal from an order denying the recovery of attorneys' fees from certain non-parties in the trial below.

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MOTION TO DISMISS

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

NOW COME Appellees the State of Texas (the "State") and the Texas Education Agency ("TEA") and make this their Motion to Dismiss the appeal of Appellants Coalition to Preserve Houston and the Houston Independent School District, et al. (the "Coalition").

STATEMENT OF THE CASE

On July 1, 1980 the three-judge District Court below granted the relief requested by the Coalition, declared that the Westheimer Independent School District (the "District") had been created illegally, dissolved the District and enjoined the members of the Board of

Trustees of the District from, among other things, acting in concert as the Board of Trustees.

That part of the order granting injunctive relief is not here appealed from.

The District Court also partially granted the Coalition's Motion for Attorneys' Fees but refused the Coalition's request that recovery of the award be allowed against the State or TEA.

STATUTORY PROVISION

28 U.S.C. § 1253 provides:

> Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by an Act of Congress to be heard and determined by a district court of three judges.

SUMMARY OF ARGUMENT

A denial of a motion to award attorneys fees is not a denial of an injunction and is not appealable directly to this Court under 28 U.S.C. § 1253.

ARGUMENT

This is not an appeal from the grant or denial of an interlocutory or permanent injunction by a three-judge panel. Appellant obtained the injunctive relief it sought below.

Rather, this appeal is from an order of the three-judge court denying Appellant recovery of attorneys' fees from the State and TEA. Such an order does not satisfy the requirements of 28 U.S.C. § 1253 and, consequently, this Court is without jurisdiction of the appeal. *Gunn v. University Committee To End The War In Viet Nam*, 399 U.S. 383 (1970); *Perez v. Ledesma*, 401 U.S. 82 (1971).

The District Court's decision not to allow recovery of attorneys' fees from the State and TEA was unrelated to the decision regarding injunctive relief. The issue in this appeal is not comparable to those in *Roe v. Wade*, 410 U.S. 113, 123 (1973) and *White v. Regester*, 412 U.S. 755 (1973) in which appeal from declaratory judgments was allowed where the declaratory judgments and injunctions appealed from were based upon the same operative facts and legal theories.

CONCLUSION

For the reason stated, the appeal should be dismissed for lack of jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that 3 true and correct copies of the foregoing Motion to Dismiss have been sent by United States Postal Service, Certified, Return Receipt Requested, this _____ day of November, 1980, to:

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